

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 36

An Act to amend and reenact §§ 62.1-44.38 and 62.1-44.38:1 of the Code of Virginia, relating to plans and programs; drought evaluation and response plans; Potomac River.

[H 2095]

Approved March 17, 2023

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-44.38 and 62.1-44.38:1 of the Code of Virginia are amended and reenacted as follows:

§ 62.1-44.38. Plans and programs; registration of certain data by water users; advisory committees; committee membership for federal, state, and local agencies; water supply planning assistance.

A. The Board shall prepare plans and programs for the management of the water resources of the Commonwealth in such a manner as to encourage, promote, and secure the maximum beneficial use and control thereof. These plans and programs shall be prepared for each major river basin of the Commonwealth, and appropriate subbasins therein, including specifically the Potomac-Shenandoah River Basin, the Rappahannock River Basin, the York River Basin, the James River Basin, the Chowan River Basin, the Roanoke River Basin, the New River Basin, and the Tennessee-Big Sandy River Basin, and for those areas in the Tidewater and elsewhere in the Commonwealth not within these major river basins. Reports for each basin shall be published by the Board.

B. 1. In preparing river basin plan and program reports enumerated in subsection A, the Board shall (i) estimate current water withdrawals and use for agriculture, industry, domestic use, and other significant categories of water users; (ii) project water withdrawals and use by agriculture, industry, domestic use, and other significant categories of water users; (iii) estimate, for each major river and stream, the minimum instream flows necessary during drought conditions to maintain water quality and avoid permanent damage to aquatic life in streams, bays, and estuaries; (iv) evaluate, to the extent practicable, the ability of existing subsurface and surface waters to meet current and future water uses, including minimum instream flows, during drought conditions; (v) evaluate, in cooperation with the Virginia Department of Health and local water supply managers, the current and future capability of public water systems to provide adequate quantity and quality of water; (vi) estimate, using a data-driven method that includes multiple reasonable assumptions about supply and demand over varying time frames, the risk that each locality and region will experience water supply shortfalls; and (vii) evaluate hydrologic, environmental, economic, social, legal, jurisdictional, and other aspects of each alternative management strategy identified.

2. The Board shall direct the Department of Environmental Quality (the Department) in its facilitation of regional water planning efforts. The Department shall (i) ensure that localities coordinate sufficiently in the development of regional water plans; (ii) provide planning, policy, and technical assistance to each regional planning area, differentiated according to each area's water supply challenges, existing resources, and other factors; and (iii) ensure that each regional plan clearly identifies the region's water supply risks and proposes strategies to address those risks.

3. *When preparing drought evaluation and response plans pursuant to subdivision 1, the Board shall recognize the localities that include any portion of the service area of a water supply utility in the Commonwealth that uses the Potomac River as a water supply source as a distinct drought evaluation region. Such plans shall incorporate the provisions of the Metropolitan Washington Water Supply and Drought Awareness Response Plan: Potomac River System (2000), including provisions related to triggers, actions, and messages for the Potomac River drought evaluation region. Nothing in this subdivision regarding the incorporation of such provisions shall be construed to limit the authority of the Governor during a declared drought emergency.*

C. The Board may, by regulation, require each water user withdrawing surface or subsurface water or both during each year to register, by a date to be established by the Board, water withdrawal and use data for the previous year including the estimated average daily withdrawal, maximum daily withdrawal, sources of water withdrawn, and volume of wastewater discharge, provided that the withdrawal exceeds one million gallons in any single month for use for crop irrigation, or that the daily average during any single month exceeds 10,000 gallons per day for any other user. Location data shall be provided by each user in a coordinate system specified by the Board.

D. The Board shall establish advisory committees to assist it in the formulation of such plans or programs and in formulating recommendations called for in subsection E. In this connection, the Board may include committee membership for branches or agencies of the federal government, branches or agencies of the Commonwealth, branches or agencies of the government of any state in a river basin

located within that state and Virginia, the political subdivisions of the Commonwealth, and all persons and corporations interested in or directly affected by any proposed or existing plan or program.

E. The Board shall prepare plans or programs and shall include in reports prepared under subsection A recommended actions to be considered by the General Assembly, the agencies of the Commonwealth and local political subdivisions, the agencies of the federal government, or any other persons that the Board may deem necessary or desirable for the accomplishment of plans or programs prepared under subsection B.

F. In addition to the preparation of plans called for in subsection A, the Board, upon written request of a political subdivision of the Commonwealth, shall provide water supply planning assistance to such political subdivision, including assistance in preparing drought management strategies, water conservation programs, evaluation of alternative water sources, state enabling legislation to facilitate a specific situation, applications for federal grants or permits, or other such planning activities to facilitate intergovernmental cooperation and coordination.

§ 62.1-44.38:1. Comprehensive water supply planning process; state, regional, and local water supply plans.

A. The Board, with advice and guidance from the Commissioner of Health, local governments, public service authorities, and other interested parties, shall establish a comprehensive water supply planning process for the development of local, regional, and state water supply plans consistent with the provisions of this chapter. This process shall be designed to (i) ensure that adequate and safe drinking water is available to all citizens of the Commonwealth; (ii) encourage, promote, and protect all other beneficial uses of the Commonwealth's water resources; (iii) encourage, promote, and develop incentives for alternative water sources, including desalinization; and (iv) encourage the development of cross-jurisdictional water supply projects.

B. The Board shall adopt regulations designating regional planning areas based primarily on river basins as appropriate based on water supply sources. The Board shall consider existing interjurisdictional arrangements in designating regional planning areas. The Board may, as appropriate, designate multiple regional planning areas within a single river basin in order to enhance the manageability of planning within such basin. The regulations shall identify the particular regional planning area in which each locality shall participate and shall state which local stakeholder groups, including local governments, industrial and agricultural water users, public water suppliers, developers and economic development organizations, and conservation and environmental organizations, shall or may participate in coordinated water resource planning. The regulations shall ~~further~~ provide a mechanism for a locality to request a change of its designated regional planning area to an adjoining planning area that is based on water supply source, river basin, or existing or planned cross-jurisdictional relationship, which change shall be effective upon approval of the Department, notwithstanding the provisions of Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2. *The regulations shall further recognize the localities that include any portion of the service area of a water supply utility in the Commonwealth that uses the Potomac River as a water supply source as a distinct regional planning area. Such plan shall incorporate the provisions of the Metropolitan Washington Water Supply and Drought Awareness Response Plan: Potomac River System (2000), including provisions related to triggers, actions, and messages for the Potomac River drought evaluation region. Nothing in this subsection regarding the incorporation of such provisions shall be construed to limit the authority of the Governor during a declared drought emergency.*

C. 1. Each locality in a regional planning area shall participate in cross-jurisdictional, coordinated water resource planning. Such local coordination shall accommodate existing regional groups that have already developed water supply plans, including planning district commissions, and other regional planning entities as appropriate.

2. Each locality in a regional planning area shall develop and submit, with the other localities in that planning area, a single jointly produced regional water supply plan to the Department of Environmental Quality (the Department). Such regional water supply plan shall (i) clearly identify the region's water supply risks and (ii) propose regional strategies to address those water supply risks.

3. Each regional water supply plan also shall comply with applicable criteria and guidelines developed by the Board. Such criteria and guidelines shall take into account existing local and regional water supply planning efforts and requirements imposed under other state or federal laws. The criteria and guidelines established by the Board shall not prohibit a town from entering into a regional water supply plan with an adjacent county in the same regional planning area.

4. This section is intended to inform any regional water resource planning being done in the Commonwealth pursuant to interstate compacts.

D. The Board and the Department shall prioritize the allocation of planning funds and other funds to localities that sufficiently participate in regional planning.

E. In accordance with subdivision B 2 of § 62.1-44.38, the Department shall facilitate regional planning and provide assistance to each regional planning area as needed.